IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1840 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHREE GOKUL SHIP-BREAKING YARD

Versus

JOINT DIRECTOR (TEXTILE)

Appearance:

MR BAIJU JOSHI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 03/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner society for quashing and setting aside an order passed by the Joint Director, (Textile) Cottage and Village Industries, Gujarat State, Gandhinagar on 15th January, 1997 (Annexure D herein) and confirmed by the Deputy Secretary, Co-operation, on February 19, 1999 (Annexure J

herein).

2. The case of the petitioner society was that an application was made by it to the Additional District Registrar, Bhavnagar, to register a society of labourers for doing work of ship breaking at Alang in Talaja Taluka, District Bhavnagar. The application was granted and the society was registered by order dated December 31, 1990. It is asserted that the Society had been functioning in accordance with the Gujarat Cooperative Societies Act, 1961, (hereinafter referred to as "the Act") and the bye-laws.

3. On May 9, 1991, a notice was issued calling upon the petitioner society to show cause why the registration of the society should not be cancelled by reviewing the order of registration. A detailed reply was given by the society. According to the society, no further steps were taken since the authorities were satisfied about the explanation submitted by the society and no order of cancellation of registration was passed. No doubt, it was the case of the authorities that the proceedings were not dropped. Some objections which were raised by the society were overruled and the order was also confirmed by the State Government in revision. The fact, however, remains that in 1993, another show-cause notice was issued on February 10, 1993 (Annexure B to the petition). In that notice, it was inter alia alleged that there was non-observance of the provisions of rules and bye-laws and hence the registration of the society was required to be cancelled. The petitioner was called upon to remain present if it wanted to state anything in the matter. The Joint Director passed an order under Section 20 of the Act on January 15, 1997 cancelling the registration of the society. It was inter alia observed:-

(i) An application was made for registration of the society on 31.12.90 and on the same day registration was granted.

(ii) Original file relating to registration of society was lost at the instance of one of the members of the Production and Cooperation Committee of the District Panchayat;

(iii) A statement of Deputy District Registrar (Panchayat) Bhavnagar dated 29.4.1991.

The above order came to be challenged by the petitioner by filing an appeal before the State Government being Appeal No.13 of 1997. It was

entertained and interim relief was granted. Interim relief was for a limited period. It was the case of the petitioner that the advocate for the petitioner remained present and requested for continuation of interim relief. No order was, however, passed at the relevant time and the Counsel for the petitioner was intimated that he will be informed about extension of the period of interim relief. Subsequently, however, to the utter shock and surprise, interim relief was vacated. Hence, a petition came to be filed being Special Civil Application No. 118 of 1997 which was allowed by a Single Judge of this Court on February 16, 1999 (Coram : Justice S.K.Keshote, J). It was observed that the order dated February 15, 1999 vacating interim relief was required to be quashed and set aside and accordingly it was set aside and interim relief granted earlier was ordered to continue till the disposal of the proceedings. It is the allegation of the petitioner that immediately the matter was taken up for final hearing by the State Government and within less than one week, the Revision Application came to be dismissed and interim relief was vacated. The considerations which weighed with the Joint Director were reiterated by the Revisional Authority and the order passed by him was confirmed.

4. Notice was issued on April 15, 1999 and it was made returnable on June 16, 1999. On March 6, 2000 rule was issued and was made returnable today i.e. April 3, 2000. It was also stated that authorities will file counter-affidavit in the meanwhile. No affidavit is, however, filed either by respondent no.1 or by respondent no.2. Today the matter is called out for final hearing.

5. I have heard Mr.B.S.Joshi for Mr.S.J.Joshi, Learned Counsel for the petitioner and Mrs.Siddhi Talati, Ld. AGP for the State. Mr.Joshi raised several contentions. He submitted that the order passed by respondent no.1 and confirmed by respondent no.2 are illegal and contrary to law. There is an error apparent on the fact of record in reaching certain findings without there being any evidence on record. He submitted that as stated in both the orders themselves, the original record was not available and hence no finding could have been arrived at by the Authorities. He contended that the documents on which reliance was placed and have been made the basis and foundation were not supplied to the petitioner and the order was passed merely on the basis of assumptions, surmises and conjectures.

6. The respondents have observed that there was

undue haste in registering the society which is not correct. The procedure required to be followed under the rules and bye-laws had been followed and registration was ordered in accordance with law. It is also not correct that there was no minimum number of promoters. Even if it is assumed that Bijalbhai was not staying at Manar Village, there were twelve promoters and excluding Bijalbhai, there were eleven promoters whereas under the law, ten promoters are sufficient to get the society registered.

7. The fact that the original record was not available cannot be considered against the petitioner particularly when a finding was recorded that the record was taken away by Mahasukhbhai Bhatt, a Member of Production and Cooperation Committee of the District Panchayat which has nothing to do with the petitioner society. There is nothing on record to show whether any action has been taken against the said person though the Joint Director has held that Mahasukhbhai demanded the original file for perusal and did not return it to respondent no.1.

8. The order cannot be said to be a speaking order and there is total non-application of mind on part of the authorities in not considering relevant and material facts. The proceedings were initiated at the instance of the then Minister for Cooperation Mr.Godhani.

9. Mr.Talati, on the other hand, supported the order passed by the Joint Director and confirmed by the State Government. She submitted that in 1991, proceedings were not dropped. Objections raised by the petitioner were overruled by passing an order to that effect and the said order was confirmed in revision. A finding was recorded that there was haste on the part of the Registering Authority in registering the society and in even absence of original file, the first respondent was satisfied that no registration could have been granted and the order was, therefore, set aside which was confirmed in revision. She, therefore, submitted that the petition deserves to be dismissed. It was also contended by Ms.Talati that Bijalbhai was the Chief Promoter and when he was not residing at Village Manar, the society could not be registered.

10. Now, Section 6 of the Act provides for conditions and registration of Society. It enacts that no society other than a federal society shall be registered under the Act unless it consists of atleast ten persons who are qualified to be members under the Act and who reside in

the area of operation of the society. The section does not speak for Chief Promoter. My attention was not invited to any other provision laying down a proposition that the Chief Promoter must be resident of a particular village. Mr.Joshi stated that the operation of the society is not limited to village Manar and Bijalbhai is residing in an area of operation of the society which is in consonance with Section 6. I express no opinion on that aspect.

11. In the facts and circumstances of the case, in my opinion, the petition deserves to be allowed. So far as the allegation against the then Minister is concerned apart from the fact that the allegations are very vague, Mr.Godhani has not been joined as a party respondent eonomine. A bald assertion that "the Office bearers of the society were friends and supports of one Shri Jaywantsinh Jadeja, who was in eyeshore of one Shri Godhani" and the proceedings were initiated against the petitioner is not sufficient. Material particulars of malafide must be placed on record of the petition. Since there is no material whatsoever, allegation of malafide cannot be upheld.

12. But on the merits, the contentions raised by Mr.Joshi are well founded and must be upheld. The registration was granted from December 31, 1990. Substantial period was elapsed thereafter. The first notice was issued in 1991 which was replied. There is nothing on record to show as to why second show cause notice came to be issued if the proceedings were not dropped. If the proceedings were continued further and objections raised by the petitioner society were overruled, there was no reason to issue second notice in February, 1993.

13. Moreover, it is an admitted fact that the original record was not available. That fact is reflected in both the orders i.e. order passed by the respondent no.1 and confirmed by respondent no.2. Mr.Joshi, in my opinion, is right in submitting that without the original record, no finding can be recorded by the authority that what was alleged against the petitioner was correct and what was controverted by the petitioner society was incorrect. Again, it was stated by the respondent no.1 in the order itself that the original file was demanded by Mahasukh Bhatt for perusal and he had not returned the file. One fails to understand why no action was taken against him and file has not been taken back from the man who has been located by the authority to whom the file has been entrusted.

Prima facie Mr.Joshi is also right in submitting that since there were twelve promoters even if name of Bijalbhai is excluded, there will be eleven promoters. Why the authority did not consider that fact and why registration of society was cancelled.

14. All these points, in my opinion, deserve consideration. Since they are not considered in their proper perspective, the petition deserves to be allowed and is accordingly allowed. The order passed by the respondent no.1 and confirmed by respondent no.2 is hereby quashed and set aside.

15. For the forgoing reasons, the petition is allowed. The orders passed by the respondent no.1 & 2 are hereby quashed and set aside. It is, however, kept open to the authorities and they are at liberty to take appropriate proceedings in accordance with law. Rule is made absolute. There shall be no order as to costs.

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